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234813

**FILED**

SEP 12 2013

September 12, 2013

**SURFACE  
TRANSPORTATION BOARD**

Karl Morell  
Of Counsel

kmorell@balljanik.com

BY HAND DELIVERY

Cynthia Brown  
Chief, Section of Administration  
Surface Transportation Board  
Office of Proceedings  
395 E Street, SW  
Washington, DC 20423



Re: Finance Docket No. 35767, Allentown and Auburn Railroad  
Company, Inc. -- Operation Exemption -- Kutztown  
Transportation Authority

Dear Ms. Brown:

Attached for filing are the original and ten copies of a Verified  
Notice of Exemption under 49 C.F.R. § 1150.31 and a check  
covering the \$1,800 filing fee. Also enclosed is a CD containing the  
Notice and Summary.

If you have any questions, please contact me.

Sincerely,

*Karl Morell*

Karl Morell  
Of Counsel

**ENTERED**  
Office of Proceedings  
SEP 13 2013  
Part of  
Public Record

Enclosures

**FEE RECEIVED**

SEP 12 2013

**SURFACE  
TRANSPORTATION BOARD**

1

Portland, Oregon

| Bend, Oregon

| Seattle, Washington

| Washington, DC

234813

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35767

ALLENTOWN AND AUBURN RAILROAD COMPANY, INC.  
-- OPERATION EXEMPTION --  
KUTZTOWN TRANSPORTATION AUTHORITY

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.31, Et Seq.



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TRANSPORTATION BOARD

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Part of  
Public Record

KARL MORELL  
Of Counsel  
BALL JANIK LLP  
Suite 225  
655 Fifteenth Street, N.W.  
Washington, D.C 20005  
(202) 638-3307

Attorney for  
ALLENTOWN AND AUBURN  
RAILROAD COMPANY, INC.

Dated: September 12, 2013

BEFORE THE  
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35767

ALLENTOWN AND AUBURN RAILROAD COMPANY, INC.  
-- OPERATION EXEMPTION --  
KUTZTOWN TRANSPORTATION AUTHORITY

VERIFIED NOTICE OF EXEMPTION  
Pursuant to 49 C.F.R. § 1150.31, Et Seq.



Allentown and Auburn Railroad Company, Inc. ("AARR"), a non-carrier, files this Notice of Exemption pursuant to 49 C.F.R. Part 1150, Subpart D--Exempt Transactions, to permit AARR to operate a 4.12-mile rail line owned by the Kutztown Transportation Authority, a municipal authority organized under the Pennsylvania Municipal Authorities Act of 1954 ("KTA").

In support of this Notice of Exemption, AARR submits the following information as required by 49 C.F.R. § 1150.33:

(a) Full name and address of applicant:

Allentown and Auburn Railroad Company, Inc.  
200 Center Street  
Tamaqua, PA 18252

(b) Applicant's Representative:

Karl Morell  
Of Counsel  
BALL JANIK LLP  
Suite 225  
655 Fifteenth Street, N.W.  
Washington, DC 20005  
(202) 638-3307

(c) Statement of Agreement:

AARR and East Penn Railroad, LLC ("ESPN") are in the process of executing an Assignment of Lease and Landlord Consent Agreement ("Assignment Agreement") whereby ESPN will assign to AARR the Agreement For Operation of Railroad Line between KTA and ESPN. KTA will consent to the assignment.

(d) The operator of the property:

AARR will be the operator of the 4 1/2-mile rail line.

(e) Summary of proposed transaction:

ESPN is the current operator of the rail line. See STB Finance Docket No. 35104, *East Penn Railroad, LLC – Operation Exemption – Kutztown Transportation Authority* (not printed) served December 13, 2007. ESPN has agreed to assign to AARR its Agreement with KTA to operate the rail line.

(1) The name and address of the owner of the subject property:

Kutztown Transportation Authority  
45 Railroad Street  
Kutztown, PA 19530-1112

(2) The involved transaction is expected to be consummated on or some time after the effective date of this Notice.

(3) AARR is seeking authority to operate, as a common carrier by railroad, over the rail line located between Milepost 0.17, at Topton, PA, and Milepost 4.29, at Kutztown, PA.

(4) The length of the rail line is 4.12 miles

(f) A map of the rail line is attached as Exhibit 1

(g) AARR hereby certifies that this transaction will not result in AARR becoming a Class II or Class I rail carrier. The projected annual revenue of AARR will not exceed \$5 million. Consequently, the notice requirements of 49 C.F.R. § 1150.32(c) do not apply.

(h) The Assignment Agreement and the Agreement For Operation of Railroad Line being assigned to AARR do not contain any provision that prohibits AARR from interchanging traffic with a third party or limits AARR's ability to interchange with a third party.

A caption summary, as required by 49 C.F.R. § 1150.34, is attached

#### **ENVIRONMENTAL AND HISTORIC IMPACTS**

AARR is obtaining operating authority over the rail line for continued rail operations. Further Board approval is required for AARR to discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are 50 years old or older. Hence, this Notice of Exemption does not require an historic report under 49 C.F.R. § 1105.8(b)(1).

AARR's operations of the rail line will not result in significant changes in carrier operations. There will not be a diversion of: (1) more than 1,000 rail carloads a year to motor carriage; or (2) an average of 50 carloads per mile per year for any part of these lines to motor carriage. This transaction will not result in: (1) an increase of at least eight trains a day on any segment of the lines; (2) an increase of rail yard activity of at least 100 percent; or (3) an average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day.

AARR's operation of the rail line will not affect a Class I or nonattainment area under the Clean Air Act. In any event, the thresholds of 49 C.F.R. § 1105.7(e)(5)(ii) will not be exceeded. Finally, the transportation of ozone depleting materials is not contemplated. Therefore, no environmental documentation is required under 49 C.F.R. § 1105.6(c)(2).

This action will not significantly affect either the quality of the human environment or energy conservation.

Respectfully submitted,

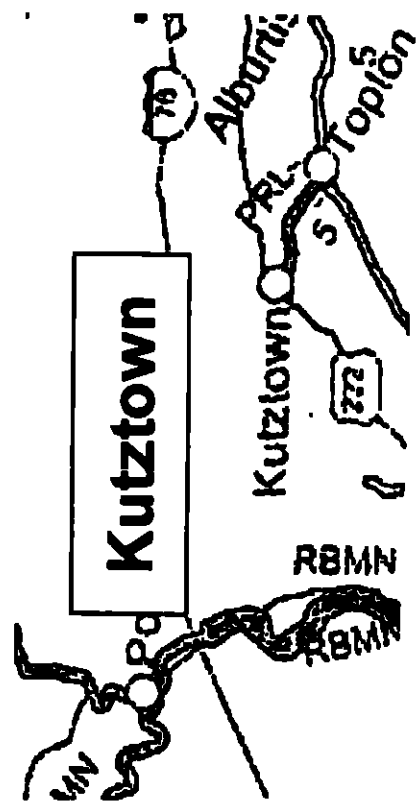


KARL MORELL  
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655 Fifteenth Street, N.W.  
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Attorney for:  
ALLENTOWN AND AUBURN RAILROAD  
COMPANY, INC.

Dated: September 12, 2013

EXHIBIT 1



**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

**FINANCE DOCKET NO 35767**

**ALLENTOWN AND AUBURN RAILROAD COMPANY, INC.  
-- OPERATION EXEMPTION --  
KUTZTOWN TRANSPORTATION AUTHORITY**

Allentown and Auburn Railroad Company, Inc. ("AARR"), a non-carrier, has filed a notice of exemption to operate the rail line owned by Kutztown Transportation Authority and located between Milepost 0.17, at Tipton, PA, and Milepost 4.29, at Kutztown, PA

Comments must be filed with the Board and served on Karl Morell, Of Counsel, BALL JANIK LLP, Suite 225, 655 Fifteenth Street, N.W., Washington, DC 20005, (202) 638-3307. This notice is filed under 49 C.F.R 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.



VERIFICATION

STATE OF NEW JERSEY

COUNTY OF MORRIS

)  
) ss.  
)

I, Pete Cole, being duly sworn depose and state that I am Vice President of Allentown and Auburn Railroad Company, Inc., that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.

Pete Cole  
Pete Cole

SUBSCRIBED AND SWORN TO before me this 11 day of September, 2013, in the County of Morris, State of New Jersey.

My Commission Expires: 01/20/2016

Vanitha Alex  
Notary Public

